

United States District Court
Central District of California

FABRIC SELECTION, INC., a California
corporation,

Plaintiff,

v.

MANJEET INTERNATIONAL, INC., a
New York corporation; UNION
APPAREL GROUP, LTD., a New York
corporation; and DOES 1 through 10,
Inclusive,

Defendants.

Case No. 2:17-cv-02353-ODW (KS)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR DEFAULT
JUDGMENT [33]**

I. INTRODUCTION

Plaintiff Fabric Selection, Inc. ("Fabric Selection") brought suit against Defendants Manjeet International, Inc. ("Manjeet") and Union Apparel Group, Ltd. ("Union") for fabric design copyright infringement. Fabric Selection and Union reached a settlement, and the Court dismissed Union from the case. (ECF No. 36.) Fabric Selection now moves for default judgment against Manjeet. (ECF No. 33.) For the following reasons, the Court **GRANTS** the Motion, and awards Fabric Selection

1 \$750.00 in statutory damages. The Court **DENIES** Fabric Selection’s request for costs
2 and attorneys’ fees.¹

3 **II. BACKGROUND**

4 **A. Factual Background**

5 Fabric Selection is a Los Angeles-based fabric designer. (Compl. ¶ 1, ECF No.
6 1.) Manjeet is a New York corporation that manufactures apparel products in India and
7 sells its products to wholesale distributors. (*Id.* ¶ 2; Decl. of Sean Javaheri (“Javaheri
8 Decl.”) ¶ 5, ECF No. 33-1.) Union is a wholesale apparel distributor. (Javaheri Decl.
9 ¶ 6.) Union purchases fabric and fabric designs from suppliers such as Fabric Selection
10 and contracts with manufacturers such as Manjeet who make the garments and ship
11 them to Union for retail distribution. (*Id.*)

12 In or around December 2015, Union purchased several thousand yards of fabric
13 from Fabric Selection. (Javaheri Decl. ¶ 7.) This fabric bore the design that is the
14 subject of this action (“Subject Design”). (*Id.*)

15 On March 30, 2016, Union received from Manjeet a shipment of 2,004 skirts
16 containing the Subject Design. (Decl. of Stacy Knox (“Knox Decl.”) Ex. B at 8, Ex. A
17 at 31, ECF No. 33-2.) At least some, possibly all, of these skirts violated Fabric
18 Selection’s copyright in the Subject Design. (Knox Decl. ¶¶ 2–3.) It’s not clear from
19 the record who caused the infringing skirts to be manufactured. Each of the parties in
20 this action has a slightly different take on the matter.

21 *1. Fabric Selection’s Version of Events*

22 Sometime in 2016, Fabric Selection discovered goods that infringed its copyright
23 that had been “distributed” by Union. (Knox Decl. ¶ 29.) The record is silent as to how
24 Fabric Selection made this discovery and as to how much infringing product it
25 discovered.

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28 ¹ After carefully considering the papers filed in support of the Motion, the Court deems the matter
appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 In its Complaint, Fabric Selection does little to distinguish the two Defendants in
2 this action, and seems to indicate that Manjeet and Union are part of a distribution chain
3 that produced infringing goods. (*See* Order Denying Motion for Default Judgment 4,
4 ECF No. 23; Compl. ¶¶ 3–4.) During discovery, Union produced a Purchase Order, a
5 Packing List, and an Invoice reflecting its acquisition of the skirts from Manjeet. (Knox
6 Decl. Ex. A at 31–33.) Fabric Selection asserts that these documents show that
7 “Manjeet was paid for its infringing conduct.” (Mot. 12, ECF No. 33.)

8 *2. Union’s Version of Events*

9 During Fabric Selection’s factual investigation, a Union officer represented to
10 counsel for Fabric Selection that Union had received “additional, unauthorized” skirts
11 from Manjeet. (Knox Decl. ¶ 3.)

12 During discovery, Fabric Selection submitted Interrogatories and Requests for
13 Admission to Union. (*Id.* ¶ 8.) Union’s responses to these discovery requests contain
14 four assertions relevant to the resolution of this Motion. (*Id.* Ex. B at 36–41.) First,
15 Union asserts that it “obtained the [Subject] DESIGN on or about March 30, 2016, when
16 the garments bearing it arrived at [Union’s] warehouse from defendant
17 MANJEET” (*Id.* at 38.) Second, Union claims that it “did not purchase any
18 SUBJECT PRODUCT.” (*Id.*) Third, Union states that “the SUBJECT PRODUCT
19 arrived at [Union’s] warehouse without [Union’s] prior knowledge that the SUBJECT
20 PRODUCT was ever ordered or shipped to [Union].” (*Id.* at 41.) Finally, Union
21 informed Fabric Selection that Union had “not sold any units of SUBJECT PRODUCT”
22 and that Union had “2,004 units of Subject Product in its possession, custody, or
23 control.” (*Id.* at 39, 40.)

24 *3. Manjeet’s Version of Events*

25 Counsel for Fabric Selection declares that at some point a Manjeet officer stated
26 that Manjeet manufactured and shipped the skirts to Union’s facility “at Union’s
27 request.” (Knox Decl. ¶ 4.)
28

1 **B. Procedural background**

2 On March 27, 2017, Fabric Selection filed a Complaint alleging copyright
3 infringement and contributory copyright infringement against Defendants Union and
4 Manjeet. (Compl. ¶¶ 11–30.) Union answered, denying all of Fabric Selection’s
5 substantive allegations and raising a host of affirmative defenses. (ECF No. 18.)
6 Manjeet, for its part, failed to appear, and the Clerk entered default against it on May 1,
7 2017. (ECF No. 15.) Fabric Selection then moved for default judgment against
8 Manjeet, but the Court denied the motion because Union was still a defendant in the
9 case. (ECF Nos. 17, 23.)

10 Fabric Selection and Union moved forward with settlement negotiations, and on
11 December 21, 2017, Fabric Selection notified the Court that it had reached a settlement
12 with Union. (ECF No. 35.) Two weeks later, Fabric Selection petitioned this Court to
13 enter default judgment against Manjeet, who at that point still had not appeared in this
14 action. (ECF No. 33.)

15 In late January 2018, Manjeet’s principal officer Sudeep Kaur submitted a
16 declaration on Manjeet’s behalf in response to Fabric Selection’s Motion for Default
17 Judgment. (Min. Order 1, ECF No. 34.) The Court could not accept the declaration,
18 because a corporation who seeks to appear before a court in the Central District of
19 California must be represented by an attorney licensed to practice in this District. C.D.
20 Cal. L.R. 83-2.2.2. As a result, on January 29, 2018, the Court struck Mr. Kaur’s
21 declaration. (Min. Order 1.)

22 Two weeks later, on February 12, 2018, the Court dismissed Union from the
23 action. (ECF No. 36.) Fabric Selection now asks the Court to find that Manjeet is a
24 willful infringer and enter a default judgment in the amount of \$150,000.00. (ECF No.
25 38.)

III. LEGAL STANDARD

A. Default judgment

Under Federal Rule of Civil Procedure 55(a), the clerk of the court must enter a party's default "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." Fed. R. Civ. P. 55(a). After a default has been entered by the clerk of the court, a court may enter a default judgment pursuant to Rule 55(b). Fed. R. Civ. P. 55(b). However, "a defendant's default does not automatically entitle the plaintiff to a court-ordered judgment." *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1174 (C.D. Cal 2002).

Before the Court can award a default judgment, the requesting party must satisfy the procedural requirements established under the Local Rules of this district and Rule 55 of the Federal Rules of Civil Procedure. *PepsiCo*, 238 F. Supp. 2d at 1174. Central District of California Local Rule 55-1 requires that the movant submit a declaration establishing: (1) when and against whom default was entered; (2) identification of the pleading to which default was entered; (3) whether the defaulting party is a minor, or an incompetent person, or exempt under the Servicemembers' Civil Relief Act; and (4) that the defaulting party was served with notice, if required by Fed. R. Civ. P. 55(b)(2). *Vogel v. Rite Aid Corp.*, 992 F. Supp. 2d 998, 1006 (C.D. Cal. 2014); C.D. Cal. Local Rule 55-1.

After satisfying the procedural requirements, the decision to grant default judgment is committed to the discretion of the district court. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). When moving for default judgment, the well-pleaded factual allegations in the complaint are accepted as true, with the exception that allegations as to the amount of damages must be proved by the plaintiff. *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987). Along with the complaint, the Court looks "to affidavits and declarations to determine whether default judgment is appropriate." *Title Design Collection Inc. v. Ross Stores Inc.*, No. CV 13-8899 GAF

1 (ASX), 2014 WL 12773909, at *2 (C.D. Cal. June 5, 2014) (citing William W.
2 Schwarzer et al., *California Practice Guide: Federal Civil Procedure Before Trial*
3 § 6:91 (2010)).

4 In exercising discretion to award a default judgment, courts in the Ninth Circuit
5 consider a number of factors (the “*Eitel* factors”), including (1) the possibility of
6 prejudice to plaintiff; (2) the merits of plaintiff’s substantive claim; (3) the sufficiency
7 of the complaint; (4) the sum of money at stake; (5) the possibility of a dispute
8 concerning material facts; (6) whether defendant’s default was due to excusable neglect;
9 and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring
10 decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

11 **B. Copyright infringement**

12 To prove copyright infringement, a plaintiff must show (1) ownership of a valid
13 copyright and (2) copying of constituent elements of the work that are original. *Feist*
14 *Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). A plaintiff bringing suit
15 under the Copyright Act “may elect, at any time before final judgment is rendered, to
16 recover, instead of actual damages and profits, an award of statutory damages for all
17 infringements involved in the action, with respect to any one work.” 17 U.S.C.
18 § 504(c)(1). This election is available to a plaintiff “regardless of the adequacy of the
19 evidence offered as to . . . actual damages or the amount of the defendant’s profits.”
20 *Columbia Pictures Television v. Krypton Broad. of Birmingham, Inc.*, 259 F.3d 1186,
21 1195 (9th Cir. 2001) (quoting Melville B. Nimmer & David Nimmer, *Nimmer on*
22 *Copyright* § 14.04[A]).

23 Statutory damages range from \$750 to \$30,000 per work infringed. 17 U.S.C.
24 § 504(c)(2). If the copyright holder proves that the infringement was “willful,” the
25 Court may, in its discretion, increase statutory damages to up to \$150,000 per work. *Id.*
26 Conversely, if an infringer is innocent, the Court may, in its discretion, decrease
27 statutory damages to \$200 per work. *Id.* An innocent infringer is one who “was not
28 aware and had no reason to believe that his or her acts constituted an infringement of

1 copyright.” *Id.* The burden of proving innocent infringement falls on the infringer. *See*
2 *D.C. Comics, Inc. v. Mini Gift Shop*, 912 F.2d 29, 35 (2nd Cir. 1990) (increasing district
3 court’s award of statutory damages from \$200 to \$500 against infringers who were
4 similarly situated to other innocent infringers but who had not themselves appeared in
5 court to prove their innocence). A single statutory award is available for each
6 copyrighted work that has been copied. *See Louis Vuitton Malletier, S.A. v. Akanoc*
7 *Solutions, Inc.*, 658 F.3d 936, 946–47 (9th Cir. 2001) (quoting 18 C.J.S. *Copyright*
8 § 127 (2011)) (“Only a single award of statutory damages within the statutory limits
9 may be made for all infringements involved in the action with respect to any one
10 work . . .”).

11 “The court has wide discretion in determining the amount of statutory damages
12 to be awarded, constrained only by the specified maxima and minima.” *Harris v. Emus*
13 *Records Corp.*, 734 F.2d 1329, 1335 (9th Cir. 1984). In making its determination, the
14 Court is guided by “what is just in the particular case, considering the nature of the
15 copyright, the circumstances of the infringement and the like.” *Peer Int’l Corp. v.*
16 *Pausa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990) (quoting *F.W. Woolworth Co.*
17 *v. Contemporary Arts, Inc.*, 344 U.S. 228, 232 (1952)). “Even for uninjurious and
18 unprofitable invasions of copyright the court may, if it deems it just, impose a liability
19 within [the] statutory limits to sanction and vindicate the statutory policy” of
20 discouraging infringement. *Woolworth Co.*, 344 U.S. at 233.

21 IV. DISCUSSION

22 A. Procedural requirements

23 Plaintiff Fabric Selection’s Motion satisfies the procedural requirements for
24 default judgment pursuant to Fed. R. Civ. P. 55(a) and Local Rule 55-1. By declaration,
25 Fabric Selection’s attorney identified the Complaint and established that the Clerk of
26 the Court entered default against Manjeet on May 1, 2017. (Suppl. Decl. of Stacey
27 Knox ¶¶ 2, 3, ECF No. 41.) The Declaration further confirms that Manjeet, a
28 corporation, is neither an infant nor an incompetent person, nor is it exempt under the

1 Servicemembers' Civil Relief Act. (*Id.* ¶¶ 4, 5.) Finally, Fabric Selection provided the
2 Court with notice that Manjeet has not appeared in this action, and, as such, written
3 notice of default judgment under Federal Rule of Civil Procedure 55(b)(2), as
4 referenced by Local Rule 55-1(e), is not required. (*Id.* ¶ 6; *see also* ECF No. 38.) Fabric
5 Selection has met the applicable procedural requirements.

6 **B. *Eitel* factors**

7 In determining if default judgment is appropriate, the Court considers in turn each
8 of the seven factors articulated in *Eitel*, 782 F.2d at 1471–72. The Court finds that,
9 while some of the *Eitel* factors weigh against granting this Motion, a default judgment
10 is, on the balance, appropriate.

11 *1. Without default judgment, Fabric Selection will suffer prejudice*

12 The first *Eitel* factor considers the prejudice that would be suffered by Plaintiff
13 if default is not entered. *Eitel*, 782 F.2d at 1471. Denial of default leads to prejudice
14 when it leaves a plaintiff without a remedy or recourse for recovery of compensation.
15 *Landstar Ranger, Inc. v. Parth Enter., Inc.*, 725 F. Supp. 2d 916, 920 (C.D. Cal. 2010);
16 *PepsiCo*, 238 F. Supp. 2d at 1177. “[P]ast misconduct and current failure to litigate [a]
17 case indicate that [a defendant] is highly unlikely to correct past behavior or otherwise
18 compensate [p]laintiffs without a default judgment by the Court.” *Kerr Corp. v. Tri*
19 *Dental, Inc.*, No. SACV 12-0891 DOC (CWx), 2013 WL 990532, at *3 (C.D. Cal. Mar.
20 11, 2013).

21 Manjeet has had sufficient time to appear in this suit, but it has not done so. At
22 this point, it appears that default judgment is the only way for Fabric Selection to receive
23 compensation for Manjeet’s shipment of infringing garments. On the whole, the first
24 *Eitel* factor weighs in favor of granting default judgment.

25 *2. Fabric Selection pleads a sufficient and meritorious copyright infringement*
26 *claim*

27 “Under an *Eitel* analysis, the merits of plaintiff’s substantive claims and the
28 sufficiency of the complaint are often analyzed together.” *Universal Music-MGB NA*

1 *LLC v. Quantum Music Works, Inc.*, No. CV 16–3397 FMO (AJWx), 2017 WL
2 2350936, at *3 (C.D. Cal. May 30, 2017). Together, the two factors “require that a
3 plaintiff state a claim on which [it] may recover.” *Philip Morris USA, Inc. v. Castworld*
4 *Prods., Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003). To state a claim for copyright
5 infringement, Fabric Selection must demonstrate (1) ownership of a valid copyright and
6 (2) copying of the protected elements of the work. *Feist Publ’ns*, 499 U.S. at 361; *L.A.*
7 *Printex Indus., Inc. v. Aeropostale, Inc.*, 676 F.3d 841, 846 (9th Cir. 2012).

8 Fabric Selection has met the first requirement for copyright infringement by
9 demonstrating ownership of a valid copyright in the Subject Design. A copyright
10 registration certificate constitutes *prima facie* evidence of the validity of the copyright
11 and the facts stated on the certificate, including the fact that the plaintiff owns a
12 copyright. *Lamps Plus, Inc. v. Seattle Lighting Fixture Co.*, 345 F.3d 1140, 1144 (9th
13 Cir. 2003); *see* 9th Circuit Model Jury Instruction 17.5. Fabric Selection has presented
14 a Certificate of Registration from the United States Copyright Office demonstrating
15 registration of the Subject Design. (Compl. ¶¶ 9–10, Ex. 2.) Therefore, Fabric Selection
16 has made a *prima facie* showing of ownership. Since Manjeet has not appeared to rebut
17 this showing, the Court concludes that Fabric Selection owns a valid copyright in the
18 Subject Design.

19 Fabric Selection has also met the second requirement for copyright infringement
20 by demonstrating that Manjeet has copied the protected elements of the Subject Design.
21 Specifically, Fabric Selection alleges copying by asserting that “Defendants have
22 manufactured . . . garments upon which were unauthorized reproductions of the
23 Copyrighted Design.” (Compl. ¶ 12.) The Court draws a reasonable inference in favor
24 of Fabric Selection that “manufacturing” as alleged in the Complaint includes actual
25 copying of the Subject Design. The Court therefore finds that the well-pleaded
26 allegations in the Complaint state a claim for copyright infringement.

27 The Court notes, however, that many of the Complaint’s allegations are
28 conclusory assertions that lack a specific factual underpinning. (*See* Compl. ¶¶ 12, 13,

1 16, 20, 21, 23–26, 29, 30.) In determining if a complaint states a claim upon which
2 relief can be granted, the Court need not accept as true “conclusory allegations of law
3 and unwarranted inferences.” *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th
4 Cir. 1996.) For example, Fabric Selection alleges that Manjeet was “willful” in its
5 infringement, while providing no specific facts that show willfulness. (Compl. ¶¶ 21,
6 30.) In ruling on this Motion, the Court disregards such conclusory allegations and
7 instead looks only to the well-pleaded factual allegations in the Complaint, along with
8 affidavits and documentary evidence in the record. *See Title Design Collection*, 2014
9 WL 12773909, at *2.

10 On the balance, the second and third *Eitel* factors support default judgment.

11 3. *Gaps and inconsistencies in the record present the possibility of disputed*
12 *material facts*

13 The next *Eitel* factor considers the possibility of disputed material facts.
14 *PepsiCo*, 238 F. Supp. 2d at 1177. The possibility of dispute over material facts makes
15 default judgment less appropriate. *Id.* Because the general rule is that a defaulting party
16 admits the facts alleged in the complaint to be taken as true, *Televideo*, 826 F.2d at 917–
17 19, this *Eitel* factor often weighs strongly in favor of default judgment. *See Wecosign,*
18 *Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 1082 (C.D. Cal. 2012) (“Where a
19 plaintiff has filed a well-pleaded complaint, the possibility of dispute concerning
20 material facts is remote.”). Here, however, after taking the facts alleged in the
21 Complaint as true, the Court finds that substantial gaps and inconsistencies in the record
22 remain, sustaining the possibility of disputed material facts.

23 The first gap in the record relates to whether Manjeet indeed copied the Subject
24 Design. Because copying can be difficult to prove, a plaintiff may prove copying
25 through circumstantial evidence that (1) the defendant had access to the copyrighted
26 work prior to the creation of defendant’s work and (2) there is substantial similarity
27 between the copyrighted work and the defendant’s work. *See Unicolors, Inc. v. Urban*
28 *Outfitters*, 853 F.3d 980, 984–85 (9th Cir. 2017).

1 To show copying, Fabric Selection alleges, and the Court agrees, that Manjeet
2 had access to the Subject Design, and that the Subject Design and the design on
3 Manjeet's skirts are substantially similar. (Mot. 16–18.) However, in this particular
4 case, these two allegations, without more, leave doubts about the validity of Fabric
5 Selection's claim for copyright infringement. This is because Union ordered several
6 thousand yards of fabric from Fabric Selection in December 2015. (Javaheri Decl. ¶ 7.)
7 Nowhere in Fabric Selection's filings is it affirmatively alleged that the skirts that
8 Manjeet manufactured were *not* made from the same physical shipment of fabric that
9 Fabric Selection sold to Union. Without proof that Manjeet actually printed the Subject
10 Design onto its own fabric, the Court would be unable to rule out the possibility that no
11 copying took place and that instead Manjeet simply received physical fabric from Union
12 and used that fabric to manufacture the skirts.

13 The Court determines that Manjeet actually printed the Subject Design onto its
14 own fabric by looking to the affidavits and documentary evidence on file. *See Title*
15 *Design Collection*, 2014 WL 12773909, at *2. The Purchase Order, Packing List, and
16 Invoice for the contested shipment, dated between January and March 2016, all indicate
17 that the skirts were “PRINTED.”² (Knox Decl. Ex. A at 31–33.) From these
18 documents, the Court concludes that Manjeet printed its own version of—that is, it
19 copied—the Subject Design.

20 Even so, doubts remain about whether Manjeet might have had authorization to
21 print fabric or manufacture garments bearing the Subject Design. Union asserted in its
22 responses to Fabric Selection's Requests for Admission that it, Union, was authorized
23 by Fabric Selection to (1) use the Subject Design on some products, and (2) sell products
24 bearing the Subject Design. (Knox Decl. Ex. B at 46.) If this authorization extended
25 to Manjeet's manufacturing activities, Manjeet could have a defense to copyright
26 infringement. *See Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417, 433 (1984)

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28 ² The Court considers any evidentiary objections to the Purchase Order, Packing List, and Invoice to
be waived by Manjeet's non-appearance.

1 (“[A]nyone who is authorized by the copyright owner to use the copyrighted work in a
2 way specified in the statute . . . is not an infringer of the copyright with respect to such
3 use.”). The scope of this authorization is therefore a potentially disputed material fact
4 in this case.

5 Another problematic inconsistency in the record concerns when Union first
6 obtained the Subject Design. Fabric Selection says that it shipped Union several
7 thousand yards of fabric containing the Subject Design in late 2015. (Javaheri Decl.
8 25.) Union, for its part, says that it “obtained the Subject Design on or about March 30,
9 2016, when the garments bearing it arrived at [Union’s] warehouse from defendant
10 MANJEET” (Knox Decl. Ex. B at 8.) These two allegations cannot both be true;
11 either Union first obtained the Subject Design in late 2015 when it received fabric from
12 Fabric Selection, or Union first obtained the Subject Design in March 2016 when it
13 received the shipment of skirts from Manjeet.

14 To resolve this contradiction, the Court considers how the Subject Design came
15 to be in Manjeet’s possession. Taking Union’s version of the story at face value would
16 require believing that that in early 2016, Manjeet, a manufacturer in India, happened to
17 (1) select the very same design that Fabric Selection had separately sent Union two
18 months prior, (2) manufacture two thousand skirts, and (3) ship them all to Union, who
19 did not request the shipment but who nevertheless accepted it without complaint. Such
20 a scenario is beyond credible. Instead, the natural conclusion matches what Manjeet’s
21 representative explained to counsel for Fabric Selection and provides meaning to the
22 purchase orders and invoices in the record; namely, that Union sent the Subject Design
23 to Manjeet with a request to manufacture 2,004 skirts, and Manjeet then filled and
24 shipped the order as requested. (Knox Decl. ¶ 4.)

25 This conclusion is bolstered by a May 2016 chain of emails between
26 representatives of Union and Manjeet that were sent approximately two months after
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28

1 the contested shipment.³ (Knox Decl. Ex. A at 33–35.) In the emails, Union’s
2 representative uses phrases such as “We ordered,” “We approved,” and “Our P[urchase
3]O[rder],” all of which directly contradict Union’s assertions that it was unaware of the
4 order and that it did not “obtain” the Subject Design until Manjeet’s shipment arrived
5 at its facility. (Knox. Decl. Ex. A at 34, Ex. B at 38, 41.) These observations lead most
6 naturally to the conclusion that the party that caused the infringing skirts to be
7 manufactured was Union, not Manjeet.

8 Another material inconsistency relates to how Fabric Selection discovered the
9 infringing goods. Fabric Selection asserts that it “located . . . infringing goods that had
10 been distributed by Union,” whereas Union asserts that it “had not sold any units of
11 SUBJECT PRODUCT” and that it still had all “2,004 units of Subject Product in its
12 possession, custody, or control.” (Knox Decl. ¶ 2, Ex. B at 38, 40.) It remains
13 unexplained how Fabric Selection was able to discover the infringing skirts and
14 ascertain that the skirts violated its copyright if the infringing goods remained in
15 Union’s possession, custody, or control.

16 In sum, the record contains substantial inconsistencies that Fabric Selection, as
17 the party seeking maximum statutory damages, has made no effort to resolve. These
18 inconsistencies relate to important factual matters, including the willfulness of
19 Manjeet’s infringement, and they thus present a substantial possibility of dispute as to
20 material facts in this case. *Eitel*, 782 F.2d at 1471–72. Thus, this factor weighs against
21 granting default judgment.

22 4. *The sum of money awarded to Fabric Selection weighs in favor of default*
23 *judgment*

24 The fourth *Eitel* factor balances the sum of money at stake with the “seriousness
25 of the action.” *Lehman Bros. Holdings Inc. v. Bayporte Enters., Inc.*, No. C 11–0961–
26 CW (MEJ), 2011 WL 6141079, at *7 (N.D. Cal. Oct. 7, 2011). The amount at stake

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28 ³ The Court considers any evidentiary objection to this email chain to be waived by Manjeet’s non-
appearance.

1 must not be disproportionate to the harm alleged. *Id.* Default judgments are disfavored
2 where the sum of money requested is too large or unreasonable in relation to a
3 defendant's conduct. *Truong Giang Corp. v. Twinstar Tea Corp.*, No. C 06-03594
4 JSW, 2007 WL 1545173, at *12 (N.D. Cal. May 29, 2007).

5 Although Fabric Selection asks for \$150,000.00 in statutory damages, the Court
6 awards it only \$750.00. Therefore, this factor presents no barrier to default judgment
7 in this case.

8 *5. The remaining Eitel factors support default judgment*

9 The remaining two *Eitel* factors support granting default judgment. Manjeet has
10 been served with multiple notices of Fabric Selection's prosecution of this suit, and
11 Manjeet's failure to defend can no longer be described as excusable neglect. (*See* ECF
12 Nos. 10, 24.) Finally, although the Federal Rules of Civil Procedure favor decisions on
13 the merits, when a defendant such as Manjeet has failed to appear, "a decision on the
14 merits [is] impractical, if not impossible," and default judgment is warranted. *PepsiCo*,
15 238 F. Supp. 2d at 1177.

16 For these reasons, the Court finds that, on the balance, the *Eitel* factors favor
17 granting a default judgment against Manjeet.

18 **C. Remedies**

19 Fabric Selection requests statutory damages, costs, and attorney's fees. (Mot.
20 ¶¶ 9-11.) The Court will address each request in turn.

21 *1. Statutory damages*

22 Because Manjeet has not appeared to argue that its infringement was innocent,
23 the Court can award no less than \$750.00 in statutory damages. *See* 17 U.S.C.
24 § 504(c)(1). Conversely, because the Court finds that Manjeet is not a willful infringer,
25 the Court may not grant statutory damages in excess of \$30,000.00. *See id.* Given the
26 inconsistencies in the record discussed in Section IV.B.3, *supra*, as well as the paucity
27 of evidence as to Manjeet's culpability, discussed below, the Court is unwilling to award
28 Fabric Selection any more than the minimum statutory damages imposed on non-

1 innocent infringers. The Court therefore awards Fabric Selection statutory damages in
2 the amount of \$750.00.

3 The Court's decision is based on the most natural reading of the record. Union,
4 an importer and distributor, purchased fabric containing the Subject Design from Fabric
5 Selection. Union sent the Subject Design to Manjeet and asked Manjeet to manufacture
6 2,004 skirts containing the Subject Design. Manjeet filled the order as requested, and
7 Fabric Selection thereupon asserts that Manjeet is a willful infringer. (Mot. 20–21.)

8 To prove willfulness, a plaintiff must show “(1) that the defendant was actually
9 aware of the infringing activity, or (2) that the defendant's actions were the result of
10 ‘reckless disregard’ for, or ‘willful blindness’ to, the copyright holder's right.” *Louis*
11 *Vuitton*, 658 F.3d at 944. Viewing the record as a whole, the Court is unwilling to
12 conclude that Manjeet was actually aware that its shipment of skirts infringed any
13 copyright. After all, the party that initially acquired the pattern from Fabric Selection
14 was Union, not Manjeet, and thus it was Union who was uniquely positioned to know
15 that the Subject Design was copyrighted. (*See* Javaheri Decl. ¶ 7.)

16 Nor is there any indication that the pattern Manjeet used contained any indication
17 that it was copyrighted. In cases where a work bears particularly obvious notice of its
18 copyright, an award of maximum statutory damages is within a court's discretion. *See*
19 *Warner Bros. Entm't, Inc. v. Caridi*, 349 F. Supp. 2d 1068, 1074 (C.D. Cal. 2004)
20 (finding willful infringement and imposing maximum statutory damages against a
21 defendant who copied and distributed “screener” DVDs, when the DVDs were replete
22 with notices that put the viewer on clear notice of the relevant copyright). The Court
23 finds no evidence that any such notice accompanied the Subject Design.

24 Finally, the Court cannot agree with Fabric Selection when it asserts that Manjeet
25 was “reckless” and “grossly negligent” in its failure to “take reasonable steps to avoid
26 infringement when it is recreating artwork,” analogizing to *Unicolors, Inc. v. Urban*
27 *Outfitters, Inc.*, 853 F.3d 980 (9th Cir. 2017). (Mot. 21.) That case is inapposite
28 because Manjeet and the *Unicolors* defendant occupy different positions in the supply

1 chain. The latter was a retail clothing company who collected and maintained a large
2 catalog of fabric designs and who made little to no effort to “investigate or attempt to
3 determine whether [the] designs [were] subject to copyright protections.” *Unicolors*,
4 853 F.3d at 992. Here, Manjeet is not a designer who collects fabric swatches; it is an
5 overseas clothing manufacturer who takes orders from importers such as Union.
6 (Javaheri Decl. ¶ 5.) Because Manjeet is not the party collecting the fabric designs,
7 Manjeet is not in a position to investigate the copyright associated with its orders, as the
8 *Unicolors* defendant was. The Court therefore concludes that Manjeet is not a willful
9 infringer.

10 Because Manjeet is a non-willful infringer who has not appeared, the minima and
11 maxima governing statutory damages in this case are \$750.00 and \$30,000.00,
12 respectively. *See Harris*, 734 F.2d at 1335; *D.C. Comics*, 912 F.2d at 35. Consistent
13 with the above discussion, the Court finds a statutory award of \$750.00 to be
14 appropriate.

15 This award constitutes approximately 6.5% of \$11,523.00, the latter being the
16 total amount charged for the contested shipment. (Knox Decl. Ex. A at 33.) The amount
17 charged for a shipment of infringing goods is a “circumstance[] of the infringement”
18 that may be considered when awarding statutory damages. *Pausa Records*, 909 F.2d at
19 1336. Moreover, many districts specify that disgorgement of the infringer’s profits is a
20 valid goal for an award of statutory damages. *See Dream Dealers Music v. Parker*, 924
21 F. Supp. 1146, 1153 (S.D. Ala. 1996); *Sailor Music v. IML Corp*, 867 F. Supp. 565, 570
22 (E.D. Mich. 1994); *W.B. Music Corp. v. Symetry Enters., LLC*, No. 3:06cv01214
23 (MRK)(WIG), 2007 WL 2126361, at *2 (D. Conn. June 26, 2007). In any event, the
24 Court is satisfied that an award of 6.5% of the Invoice total is sufficient, both to disgorge
25 Manjeet of any profit margin generated by these infringing goods and to deter Manjeet
26 and other clothing manufacturers from similar infringements.

1 2. *Costs and attorneys' fees*

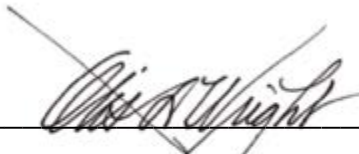
2 Fabric Selection asks the Court to award its costs and attorneys' fees associated
3 with this Motion. (Mot. ¶¶ 10–11.) In a copyright action, the Court exercises its
4 discretion to award attorneys' fees by weighing factors such as “frivolousness,
5 motivation, objective unreasonableness (both in the factual and in the legal components
6 of the case) and the need in particular circumstances to advance considerations of
7 compensation and deterrence.” *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S.Ct. 1979,
8 1985 (2016). In light of the above discussion, the Court finds that an award of \$750.00
9 in statutory damages is sufficient to effectuate the purposes of the copyright laws in this
10 controversy, and therefore declines to award Fabric Selection costs and attorneys' fees.

11 **V. CONCLUSION**

12 For the foregoing reasons, the Court **GRANTS** Plaintiff's Motion for Default
13 Judgment and awards statutory damages in the amount of \$750.00, and the Court
14 **DENIES** Plaintiff's motion for costs and attorney's fees. (ECF No. 33.) The
15 Court will issue a judgment.

16 **IT IS SO ORDERED.**

17
18 April 16, 2018

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22 _____
23 **OTIS D. WRIGHT, II**
24 **UNITED STATES DISTRICT JUDGE**
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